IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

CRP.No. 421 of 2006()

AGAINST THE ORDER DATED 14/06/2006 IN EP 58/05 IN OS.399/1969 of MUNSIFF COURT,MUVATTUPUZHA

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REVN. PETITIONERS:JUDGMENT DEBTORS/DEFENDANTS:

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1. **ALEYAMMA ITTAN PILLAI, W/O.LATE ITTAN PILLAI, POTTAYIL HOUSE, KAVUMPADY ROAD, MUVATTUPUZHA.**

2. **P.I.JOY, S/O.LATE ITTAN PILLAI, POTTAYIL HOUSE, (ELAVUNGAL), ONAKKOOR KARA, MUVATTUPUZHA TALUK.**

3. **P.I.JEEVAN, S/O.LATE ITTAN PILLAI, POTTAYIL HOUSE, (ELAVUNGAL), ONAKKOOR KARA, MUVATTUPUZHA TALUK.**

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS: DECREE HOLDERS/PLAINTIFFS:

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1. **ISSAC.T.CHERIAN, S/O.CHERIAN, THEKKUMMEL HOUSE, PAIPRA KARA, MULAVOOR VILLAGE, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER ISSAC CHERIAN, S/O.ISSAC, THEKKUMMEL HOUSE, PAIPRA KARA, MULAVOOR VILLAGE.**

2. **ALEYAMMA CHERIAN, W/O.CHERIAN, THEKKUMMEL HOUSE, PAIPRA KARA, MULAVOOR VILLAGE.**

3. **ISAHAC CHERIAN, S/O.ISAHAC, THEKKUMMEL HOUSE, PAIPRA KARA, MULAVOOR VILLAGE.**

4. **M/S.MALABAR FRUIT PRODUCTS COMPANY, MANJALLOOR KARA, REPRESENTED BY ITS MANAGING PARTNER, ABRAHAM THOMAS, S/O.THOMAS, ETTUPARAYIL HOUSE, KAVUMPADY ROAD, MUVATTUPUZHA.**

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.SHAJI P.CHALY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON 25/01/2007 PASSED THE FOLLOWING:

K.PADMANABHAN NAIR,J.

C.R.P. No. 421 OF 2006-F

DATED THIS THE 11TH DAY OF JULY, 2006

O R D E R

The judgment debtors in E.P.No.58/05 in O.S.No.399/69 on the file of Munsiff Court, Muvattupuzha are the petitioners in this Civil Revision Petition. Respondents 1 to 3 filed O.S.No.369/69 against the first petitioner and her late husband alleging that they caused obstruction to a pathway which was being used by the plaintiffs. A relief of prohibitory as well as mandatory injunctions was sought. The suit was instituted in the year 1972. The trial court decreed the suit. A decree for mandatory as well as prohibitory injunction was passed. There was an appeal against the decree and judgment passed in the suit. In the appeal, that part of the decree by which the mandatory injunction granted was vacated. Thereafter, respondents 1 to 3 assigned their right to the 4th respondent. He filed a suit as O.S.No.296/01 for a decree of permanent prohibitory injunction restraining the petitioners from causing any obstruction to the user of the pathway. The suit was contested. One of the contention raised in the suit was that the same was barred in view of the provision contained in Section 47

of C.P.C. That contention was accepted by the trial court and dismissed the suit holding that in view of the decree passed in O.S.No.399/69, the subsequent suit is barred by res judicata and the remedy, if any, available to the respondents is to execute the decree passed in O.S.No.399/69. Thereafter respondents 1 to 3 filed E.P.No.58/05 in O.S.No. 399/69. Since the E.P. was filed after the expiry of the two year period, the executing court issued show cause notice as contemplated under Order XXI Rule 22 of the C.P.C. to the judgment debtors. They appeared before the executing court. Two contentions were raised. The first contention was that the E.P.is barred by limitation and the assignee-decree holder is not competent to execute the decree. It was contended that the injunction decree is a personal decree which is incapable of being assigned in favour of another person. The contentions were repelled by the executing court and held that the E.P. is not barred by limitation. It was held that being a decree of permanent prohibitory injunction there is no period of limitation in view of the proviso to Article 136 of the Limitation Act. It was further held that when a suit for injunction is decreed that is a right annexed to the land and that will run with the land and as such the assignee can also execute injunction

decree. Challenging that finding, this C.R.P. is filed.

2. The decree passed is one for prohibitory injunction. As such , the decree will not be barred by the expiry of twelve year period as provided under the proviso to Article 136 of the Limitation Act. Since the claim was matured into a decree of injunction, the rights and obligations under the decree annexed to the land and the assignee can also execute the decree. It is to be noted that the E.P. is filed by the plaintiffs in the O.S. along with the assignee and as such the finding of the executing court is correct and does not call for any interference.

3. Advocate Shri T.Krishnanunni learned counsel appearing for the petitioners submits that there are other contentions regarding the merits of the case and the court below had posted the case for further steps even without giving an opportunity. The executing court had only considered the objection raised by the judgment debtors regarding the executability. The other contention, if any , raised by the judgment debtors regarding the merits of the claim put forward by the decree holder in the E.P. is to be considered by the court below. The impugned order shows that after finding that the decree is executable, the executing court had ordered notice

under Rule 32. At that stage, it is open to the judgment debtors to raise the contention regarding the merits of the claim and if such contentions are raised, the executing court shall decide the matter after giving both sides opportunity to adduce evidence.

The C.R.P. is disposed of in the above terms.

I.A..No.1689/06 shall stand dismissed.

K.PADMANABHAN NAIR, JUDGE

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